In the High Court of Punjab and Haryana at Chandigarh

CWP No. 1672 of 2007

Date of Decision: 07.08. 2008

Dhan Nirankar Social Welfare Society and another ..... Petitioners

Versus

State of Punjab and others ..... Respondents

Coram: Hon'ble Mr. Justice Ajay Tewari

Present: Mr.D.S. Patwalia, Advocate
for the petitioner.

Mr.S.S.Sahu, AAG, Punjab for
respondent No.1.

Mr. H.S.Hooda, Sr. Advocate with
Mr. Mahender Singh Chahal, Advocate
for respondent No.2.

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Ajay Tewari J.

The Punjab Infrastructure Development Board (for short PIDB) and the Department of Technical Education and Industrial Training, Govt. of Punjab, invited expression of interest for public-private partnership for development and running of 12 Industrial Training Institutes (I.T.Is) from firms/companies/societies/trusts/joint ventures/consortia. The scope of work

was to :-

i) undertake incremental capital expenditure to complete the institute(s)

ii) procure & install necessary equipments for different trades/courses

iii) undertake recurring expenditure and all activities necessary to conduct the courses

The pre-qualification criteria was :-

(i) a minimum networth of Rs. 1 Crore, as on 31st March, 2003 or a Turnover of Rs. 2.50 Crores for the financial year 2002-2003

(ii) experience of running an educational institution with at least 100 students or a polytechnic/ITI, anywhere in the country or abroad.

Prospective Bidders having a Networth of Rs. 10 Crores or more, will be exempted from the above stated experience criteria.

For the ITI at Jalalabad one Mr.Harkishan Lal and three members of his family responded thereto. They further claimed that they had a networth exceeding Rs. 14 Crores and thus claimed exemption from the experience criteria. Thereafter by letter dated 16.7.2003 the said persons were informed that they had been pre-qualified for the next stage. They were sent a draft Request For Proposal (for short RFP) document. On 18.7.2003 the applicants set up the petitioner-society. By letter dated 14.8.2003 the final RFP document was sent to the applicants mentioning that the last date for submission of the proposal was 8.9.2003. By letter dated 2.9.2003 said Sh.Harkishan Lal and others submitted their proposal and also informed the respondents about the setting up of the petitioner-society. By three further letters dated 17.12.2003, 9.3.2004 and 10.8.2004 the applicants were required to extend the bank guarantee (proposal security) up to 8.4.2004, 7.9.2004 and 31.1.2005 respectively. In response

to the last letter of 10.8.2004, three persons namely Parmod Chaudhary, Vikas Deep and Vimla Chaudhary wrote letter dated 20.8.2004 informing the respondents that Sh.Harkishan Lal had passed away and that the three signatories were his legal heirs; that the bank guarantee had been extended up to 31.1.2005; that they had already formed the petitioner-society and that they undertook to extend the proposal even after the death of Sh. Harkishan Lal. In the month of November, 2004 the awards for some I.T.Is were announced while no award was made for the ITI at Jalalabad. By letter dated 16.11.2003 the President of the petitioner-society-one of the applicants- wrote to the respondents requesting that notice of award for the I.T.I. at Jalalabad may be issued as soon as possible. Thereafter certain queries were put regarding the wealth details of the legal heirs of the aforementioned Sh.Harkishan Lal to the said legal heirs as well as their Chartered Accountant which were replied.

Another letter was written by the son of Sh.Harkishan Lal on 18.12.2004 again requesting that the award in the case of I.T.I. Jalalabad may also be announced expeditiously. However, by letter dated 11.2.2005 the RFP for Jalalabad was cancelled and the proposal security was returned to the bidders under Clause 5.14 of the RFP document which is quoted herein below:-

> "5.14 Right of Rejection: PIDB reserves the right to reject any proposal that does not address all the requirements of this RFP. In addition, PIDB reserves the right to accept or reject any proposal submitted by Bidders, and to cancel the RFP process

> and reject all proposals submissions, at any time, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for PIDB's action."

It is this action which has been challenged in the present petition.

Mr.D.S.Patwalia, learned counsel for the petitioner urged that the cancellation order was completely non-speaking and that since the bid of Sh. Harkishan Lal and others was the highest, reasons had to be disclosed to them for the rejection of the RFP document. He further submitted that merely the fact that Sh. HarkishanLal had died could not be a ground for rejecting the RFP for Jalalabad since the legal heirs of deceased Harkishan Lal had undertaken to fulfil the bid and, as mentioned above, had already set up the petitioner-society to run the I.T.I. He relied upon the decisions of the Hon'ble Supreme Court in **M/s Star Enterprises and others V. City and Industrial Development Corporation of Maharashtra Ltd.** reported as (1990) 3 SCC 280 and **Sterling Computers Limited V. M/ M & N Publications Limited and others** reported as (1993)1 SCC 445. In **Sterling Computers Ltd.'s** case (supra) the Hon'ble Supreme Court held as follows:-

> "At times it is said that public authorities must have the same liberty as they have in framing he policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government.

> But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the Courts have impressed that even in contractual matters the public authority should not have unfettered discretion. (emphasis supplied). In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognized by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the Overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by

the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive.

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The cases aforesaid on which reliance was placed on behalf of the appellants, have also reiterated that once the state decides to grant any right or privilege to others, then there is no escape from the rigour of Article 14; the executive does not have an absolute discretion, certain precepts and principles have to be followed, the public interest being the paramount consideration.(emphasis supplied). It has also been pointed out that for securing the public interest one of the methods recognised is to invite tenders affording opportunity to submit offers for consideration in an objective manner. However, there may be cases where in the special facts and circumstances and due to compelling reasons which must stand the test on Article 14 of the Constitution, departure of the aforesaid rule can be made. This Court while upholding the contracts by negotiation in the cases referred to above has impressed as to how in the facts and circumstances of those cases the decisions taken by the State and the authorities concerned were reasonable, rational and in the public interest.

> The decisions taken in those cases by the authorities concerned, on judicial scrutiny were held to be free from bias, discrimination and under the exigencies of the situation then existing to be just and proper. On the basis of those judgments it cannot be urged that this Court has left to the option of the authorities concerned whether to invite tenders or not according to their own discretion and to award contracts ignoring the procedures which are basic in nature, taking into account factors which are not only irrelevant but detrimental to the public interest."

In **Star Enterprises's** case (supra), the Hon'ble Supreme Court held as follows:-

> "In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have gown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures

> credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr. Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so." (emphasis supplied)

Sh. H.S. Hooda, Sr. Advocate appearing on behalf of the respondents has urged that the respondents have acted with utmost fairness in passing the impugned order. As per him, it would have been open to the respondents to have completely excluded the legal representatives of aforesaid Sh. Harkishan Lal on his death thereby leaving the field open for the other bidders. Instead, the respondents rejected the RFP and decided to invite fresh bids for the ITI at Jalalabad thereby giving another chance to all the interested persons to offer fresh bids.

In my opinion this petition must fail. Admittedly, the petitioner-society was never an applicant. Even though it was incorporated on 18.7.2003, at no stage did the original applicants state that the petitioner society should be considered as an applicant. In fact, that could not have been done since the petitioner society did not have the necessary networth.

The position which emerges is that a group of four persons had applied and, before their bid could be finalised, one of them died. Once that happened the status of that bid would, at best, be rendered inchoate, while in a worst case scenario such a bid would be deemed to have met its end by supervening circumstances. The present is not a case where a single juridical entity had applied because in such a case the death of one person would not have any effect on the bid. In the circumstances the judgments relied upon by learned counsel for the petitioner would be of no avail. In any case , as mentioned above, the petitioner-society was never an applicant and thus cannot maintain the present petition.

In this view of the matter this writ petition is dismissed, however, with no order as to costs.

(AJAY TEWARI)
JUDGE

August 07, 2008
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